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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

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SUPREME COURT, U.S.

JOSEPH P. MCCOMBS,

Petitioner,

vs.

WILLIAM SCOTT,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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CERTIORARI SHOULD NOT BE GRANTED

I. CERTIORARI SHOULD BE DENIED BECAUSE THE ISSUE IN THIS CASE HAS ALREADY BEEN RESOLVED BY THIS COURT, AND THE SEVENTH CIRCUIT'S HOLDING IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS.

Since this Court has already decided in what circumstances prisoners have state-created liberty interests protected by due process, certiorari should be denied in this case. In Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979), Chief Justice Burger, speaking for the Court, held that each state statute authorizing parole must be analyzed in order to determine whether a prisoner has a legitimate expectation of release and therefore has a liberty interest protected by due process. The Court also indicated that each parole system must be analyzed on a "case-by-case basis" in accordance with the principles announced in Greenholtz. Id. at 12. The Seventh Circuit correctly examined the Illinois statutory scheme under the Greenholtz standard and determined that there was a legitimate expectation of release if Illinois prisoners met the conditions for parole. Unites States of America ex rel. Scott v. Illinois Parole and Pardon Board, 669 F.2d 1185 (7th Cir. 1982).

The Seventh Circuit looked at the language of Ill. Rev. Stat. ch. 38, §1003-3-5 (1979) and concluded that it was "practically a mirror image" of the statute construed in Greenholtz. 669 F.2d at 1188. Because the language was not identical to that used in the Nebraska statute construed in Greenholtz, the Seventh Circuit turned to the legislative history of §1003-3-5, as embodied in the

Council Commentary to the statute. The Council Commentary states:

> The Board should state one or more of the reasons listed in subparagraph (c) as the basis for its decision denying parole as required by subparagraph (f). Additional reasons may also be stated.

Ill. Ann. Stat. ch. 38, §1003-3-5 (Smith-Hurd 1971) Council Commentary at 87-88. The Seventh Circuit concluded that this source showed that in the absence of a finding of any of the reasons set out in §1003-3-5(c), the prisoner must be released. The Seventh Circuit reinforced its reading of the statutory language and legislative history of §1003-3-5 by also considering the manner in which the agency charged with enforcing the statute, the Illinois Prisoner Review Board, implements the statute through its rules. The rules referred to by the Seventh Circuit were Rules V and VII of the Rules Governing Parole, issued by the Illinois Prisoner Review Board. Rule V sets out the statutory criteria for release and provides interpretative guidance for the Prisoner Review Board.[1/]

[1/] Rule V states:

In accordance with statute, the Board shall not parole a candidate if it determines that:

A. There is a substantial risk that the candidate will not conform to reasonable conditions of parole based on one or more of the following factors:

1. Existence of prior adult felony convictions (mitigating as well as aggravating factors to be considered).

2. An apparent pattern of aggressive or assaultive behavior (misdemeanor offenses also considered).

3. Prior adult parole or probation violations within five years prior to the present offense.

Footnote continued on page 3

Rule VII makes clear that the prisoner is entitled to release on parole unless one of the statutory reasons is found to exist. Rule VII states:

> The order [of denial] shall contain the reason or reasons for denial based on No. V above and a concise statement of facts supporting the reason or reasons given.

1/Footnote continued

4. Refusal to be supervised on parole.

5. No means of financial support or no place of residence. (Continuance not to exceed six months to seek resolution of problem.)

6. A psychiatric examination determines the candidate is not likely to conform.

B. Release of the candidate would deprecate the seriousness of the offense or promote disrespect for the law, based on one or more of the following factors:

1. The offense is one of murder, attempted murder or killing of an individual, robbery with a weapon, rape, indecent liberties, deviate sexual assault, aggravated kidnapping or kidnapping for ransom, armed violence, treason, aggravated arson, treason or calculated criminal drug conspiracy.

2. The aggravating as well as mitigating circumstances as described in Chapter 38, Sections 1005-5-3.1 and 1005-3-3.2, Illinois Revised Statutes.

C. Release would have a substantially adverse effect on institutional discipline based on one or more of the following factors as established by the finding of an Administrative Review Board.

1. Physical attack on another inmate or institutional staff.

2. Possession of weapons or drugs.

3. Repeated violation of major institutional rules.

4. Violation of any act prohibited by law.

State of Illinois Prisoner Review Board, Rules Governing Parole 6 (1979).

State of Illinois Prisoner Review Board, Rules Governing Parole 7 (1979) (emphasis added). The Seventh Circuit correctly relied on Rule VII in concluding that the Illinois parole statute mandates parole unless one of the reasons in Rule V is found.

In addition to providing an aid in the statutory construction of §1003-3-5, the rules promulgated by the Illinois Prisoner Review Board have independent significance in the determination of whether due process attaches to the Illinois parole system. As this Court stated in Connecticut Board of Pardons v. Dumschat, 452 U.S. 458 (1981), a court must look to the "statutes or other rules defining the obligations" when deciding whether a protected entitlement is created. Id. at 465 (emphasis added). As demonstrated above, the rules of the Prisoner Review Board show that a prisoner must be released unless one of the defined criteria in Rule V is established. Under Dumschat, then, the statute and the rules together have created an entitlement to parole which is protected by due process.

The Seventh Circuit's decision in this case is also consistent with Vitek v. Jones, 445 U.S. 480 (1980). In determining that a prisoner had a liberty interest not to be transferred from a prison to a mental institution, this Court examined both the statutory language and the actual practices under the statute. This Court found that prisoners could reasonably expect that they would not be transferred to a mental hospital unless one of the reasons listed in the statute was met. Likewise, in this case there was a reasonable expectation of parole under Ill. Rev. Stat. ch. 38, §1003-3-5 (1979) because the practice

in Illinois was that the parole board would only deny parole if one of the reasons listed in the statute was found. Indeed, when the Illinois Prisoner Review Board denies parole it uses a form which contains check-off boxes for each reason listed in the statute. This form forces the parole board to choose one of the reasons for denial set out in the statute. See Appendix A. The Seventh Circuit's result is consistent with the Prisoner Review Board's practice.

The above precedents are but a part of this Court's more general analysis in the area of due process. This Court's decisions hold that when a state creates a statutory benefit which may be forfeited only for "cause shown", due process protections arise. See e.g., Logan v. Zimmerman Brush Co., 102 S. Ct. 1148 (1982); Wolff v. McDonnell, 418 U.S. 539 (1974); Perry v. Sindermann, 408 U.S. 593 (1972); Board of Regents v. Roth, 408 U.S. 564 (1972). These procedural due process requirements are a matter of federal law, and do not depend on what procedure the state may deem adequate. See Vitek v. Jones, 445 U.S. 480, 491 (1980) ("These minimum requirements being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action"). This is because "any other conclusion would allow the State to destroy at will virtually any state-created ... interest." Logan v. Zimmerman Brush Co., 102 S.Ct. at 1156 (property interest).

This Court's modern analysis of due process undercuts the State's attempt to invoke principles of federalism

or comity between state and federal courts. The question of whether the Illinois statute is constructed in such a way as to cause due process to attach is a federal one. State precedent is only useful to the extent that it examines the question in light of federal standards such as those set out in Greenholtz, Dumschat, and Vitek. See Vitek v. Jones, 445 U.S. 480, 491, (1980); Arnett v. Kennedy, 416 U.S. 134 (1974) (plurality opinion). Moreover, even if state precedent were to control the issue of whether the Illinois parole release statute creates an entitlement subject to due process protection, the State has failed to cite a single Illinois case which decides this issue in its favor. While there are a number of Illinois decisions which state that parole is a matter of "grace and clemency," no Illinois case has ever decided the specific issue in this case--whether the Illinois parole release statute creates an entitlement which is protected by the Due Process Clause. The State cites two cases, People v. Hawkins, 54 Ill.2d 247, 296 N.E.2d 725 (1973) and Harris v. Irving, 90 Ill.App.3d 56, 412 N.E.2d 976 (5th Dist. 1980), as authority for the proposition that §1003-3-5 does not create a protected liberty interest. Hawkins involved the question of what type of material may be contained in statements made by the prosecutor and trial court to the parole board. This case was a pre-Greenholtz decision which did not even consider whether the Illinois parole system created a protected liberty interest. The Illinois Appellate Court addressed in Harris the issue of due process in the parole context in dicta. However, the court merely noted that under Greenholtz a prisoner has no constitutional right to parole.

The court did not consider the issue here--whether the Illinois parole system created an expectation of parole in light of Greenholtz standards. Therefore, the Seventh Circuit properly distinguished the Illinois decisions from an analytical, as well as factual, standpoint.

The Seventh Circuit's decision in this case is not inconsistent with this Court's decisions in Connecticut Board of Pardons v. Dumschat, 452 U.S. 458 (1981) and Jago v. Van Curen, 102 S.Ct. 31 (1981). In Dumschat this Court rejected a claim of entitlement based solely on statistical evidence of past decisions of the pardon board. In Jago this Court rejected a claim based on the "mutually explicit understandings" between the prisoner and the parole authorities. Here the Seventh Circuit relied neither on statistical evidence nor on mutually explicit understandings but rather on the statute, rules, and procedures used by the Illinois Prisoner Review Board.

II. THIS CASE IS NOT OF SUFFICIENT IMPORTANCE TO JUSTIFY THIS COURT'S GRANTING CERTIORARI BECAUSE THIS IS AN AREA WHICH THIS COURT HAS LEFT TO THE LOWER COURTS TO DEVELOP ON A CASE-BY-CASE BASIS CONSISTENT WITH THIS COURT'S DECISIONS.

This case is not sufficiently important to justify review by this Court. The Seventh Circuit's decision in this case, that the Illinois parole release statute requires that the Illinois Prisoner Review Board give more than boilerplate reasons when denying parole, does not burden the decision-making process of the Board in its handling of a diminishing pool of parole applicants. The Seventh Circuit's decision merely requires the Board to articulate its reasons for denying parole. Further, Illinois prisoners

sentenced since February 1, 1978 are not subject to the parole process, but instead are under a determinate sentencing system which does not provide for parole. Ill. Rev. Stat. ch. 38 §1003-3-2.1 (1981). Thus this decision only affects a diminishing number of Illinois prisoners.

Chief Justice Burger, in Greenholtz, indicated that the question of whether due process attaches to parole was one best suited for development on a "case-by-case basis." 442 U.S. at 12. This is precisely the analytical process used by the Seventh Circuit in this case. As indicated in the preceding section of this brief, the Seventh Circuit looked to the language of the Illinois statute, the Council Commentary to the statute, and the Rules of the Illinois Prisoner Review Board. This examination led the court to conclude that under the Illinois parole system an inmate who is eligible for parole can expect to be paroled unless one of the specified reasons for denial is found.

It is difficult to imagine a more careful attempt to adhere to the case-by-case analysis mandated by Greenholtz. In Averhart v. Tutsie, 618 F.2d 479 (7th Cir. 1980), for example, Judge Sprecher writing for the Seventh Circuit, used the same analysis as that used here, but reached the conclusion that the Indiana parole release statute did not create a protected liberty interest. On the other hand, the Seventh Circuit recently construed the United State parole release statute, 18 U.S.C. §4206 (1976), and the United States Parole Commission's Guidelines and found that they did create a protected liberty interest. Solomon v. Elsea, 676 F.2d 282 (7th Cir. 1982). This diversity of results is to be expected under a standard which examines

the structure of each parole system and the practices used to implement that system. Unless this Court wishes to become involved in every case which applies the principles of Greenholtz, Vitek, and Dumschat, it should deny certiorari in this case.

III. THE SEVENTH CIRCUIT'S CONSTRUCTION OF THE ILLINOIS PAROLE STATUTE IS NOT IN CONFLICT WITH THE DECISIONS IN OTHER CIRCUITS.

The Seventh Circuit properly analyzed the Illinois parole system and its decision is not in conflict with the decisions of other circuits. As one court noted, "[t]he question in each case must turn on a careful examination of the particular statutes and regulations governing parole in a given jurisdiction." Evans v. Dillahunty, 662 F.2d 522, 524 (8th Cir. 1981). Although a direct comparison is therefore difficult, the decisions handed down by other circuits are consistent with the Seventh Circuit's interpretation of Illinois law.

In one case, for instance, the Eighth Circuit found that Missouri inmates have a "protected liberty interest, rooted in state law, in parole release." Williams v. Missouri Bd. of Education and Parole, 661 F.2d 697, 698 (8th Cir. 1981), cert. denied, 102 S.Ct. 1621 (1982). Applying the Greenholtz test, the court stated:

> [W]e conclude that the Missouri law providing that when the statutory and regulatory guidelines are met the inmate shall be released on parole gives rise to the same protectible entitlement as the Nebraska scheme providing that the prisoner shall be paroled unless certain findings are made. Id. at 699 (emphasis in original).

The Eighth Circuit's analysis points up the fact, ignored by the State of Illinois in its petition for a writ of

certiorari in this case, that no magic combination of words is needed to create a constitutionally protected liberty interest. The "shall/unless" language of the Nebraska statute is one way to create such an interest. The "when/shall" language of the Missouri statute is another. The "shall not/if" language of the Illinois statute exemplifies a third articulation of a liberty interest. The question in all of these cases is whether, and to what extent, the authority of the parole board is circumscribed; the question is not what specific words are used to define that authority.

A similar analysis has been employed in the federal context. In Evans v. Dillahunty, 662 F.2d 522 (1981), the Eighth Circuit decided that the federal parole statute, 18 U.S.C. §4206(a), created a constitutionally protected expectation of liberty. See also Solomon v. Elsea, 676 F.2d 282 (7th Cir. 1982) (holding that under the federal parole statute, an inmate has an expectation of parole worthy of due process protection), and Bowles v. Tenant, 613 F.2d 776 (9th Cir. 1980) (holding that the language of the federal statute would create a liberty interest under Greenholtz).

The State cites several cases in an attempt to establish the proposition that only "shall/unless" language creates a protected liberty interest. See Petitioner's Brief at 11-12, citing Slocum v. Georgia State Bd. of Pardons and Paroles, 678 F.2d 940 (11th Cir. 1982); Stanton v. Wainwright, 665 F.2d 688 (5th Cir. 1981); Williams v. Briscoe, 641 F.2d 274 (5th Cir. 1981), cert. denied, 102 S.Ct. 299 (1981); Candelaria v. Griffin, 641 F.2d 868 (10th Cir. 1981); Schuemann v. Colorado State Bd. of Adult Parole, 624 F.2d 172

(10th Cir. 1980); Averhart v. Tutsie, 618 F.2d 479 (7th Cir. 1980); Wagner v. Gilligan, 609 F.2d 866 (6th Cir. 1979) and Shirley v. Chestnut, 603 F.2d 805 (10th Cir. 1979). These decisions, however, are easily distinguishable from the case at bar in at least two major respects. First, the state parole statutes considered in these cases accorded the parole boards unlimited discretion in deciding whether to grant parole. Therefore, those statutes were distinctly different from the Illinois statute since virtually no constraints were placed on the parole boards' authority. Second, the decisions cited by the State did not discuss the rules, regulations, or practices which would help to construe the statute and determine whether it created a reasonable expectancy of release on parole. This is in contradistinction to the Seventh Circuit's opinion, which relied on the Council Commentary to the parole statute and the Board's Rules Governing Parole in determining that the Illinois Parole statute creates an expectancy of parole protected by due process. Scott, 669 F.2d at 1189-90. In only one case cited by the State, Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979), did the court look at anything beyond the statutory language. There, the Second Circuit properly considered the New York Parole Board's Guidelines as well as the New York Parole statute. The court determined that the Guidelines were not intended to limit the Parole Board's discretion, but were merely meant to aid the Board in its decision-making process.

The Scott court correctly recognized that "in none of these cases was the language of the statute considered by the court the same or even similar to that contained

in the statute now before us." Scott, 669 F.2d at 1188. The lesson of Greenholtz is that each statute must be carefully analyzed to determine whether a constitutional liberty interest is created. Such an inquiry should follow normal rules of statutory construction, including consideration of legislative history and interpretations by the agency responsible for administering the statute. The Seventh Circuit's inquiry was proper and should not be disturbed by this Court.

IV. THE PROCEDURAL HISTORY OF THIS CASE DOES NOT REQUIRE THIS COURT TO INVOKE ITS SUPERVISORY POWERS.

The State of Illinois characterizes the Seventh Circuit's role in this case as one of an advocate, claiming that the State was denied an opportunity to present its position on the merits of the issue in this case. Petition at 23. In actuality any such denial was due to the State's own failure to take this case seriously. Now the State claims that its failure was "adequate and reasonable", as it had "no reason to suspect" that the Seventh Circuit would reach the issues it did. Id. at 29.

One problem with this position is that the State was given the same opportunity to brief this case as any other litigant in the Seventh Circuit Court of Appeals. The issues were raised by Mr. Scott in his brief. The State should not now be allowed to complain about its failure to file sufficient briefs in the Seventh Circuit. It had

the opportunity to file briefs and did not take advantage of it.[2/]

The State of Illinois claims that it was reasonably lulled into its belief that due process does not attach to parole in Illinois by certain unpublished orders of the Seventh Circuit Court of Appeals and the District Courts in Illinois. The State conveniently overlooks two facts: 1) the Seventh Circuit's Rules explicitly state that its unpublished decisions are not to be relied on as precedent, Seventh Cir. R. 35(b)(iv), and 2) the controlling Seventh Circuit opinion concerning the Illinois parole system specifically held that due process attaches to parole in Illinois. United States ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir. 1975), cert. denied, 425 U.S. 914 (1976).

The state relies on the unpublished orders in Burns v. Irving, No. 80-1429 (7th Cir. Dec. 8, 1981) and United States of America ex rel. Parisie v. Irving, No. 80-1240 (July 8, 1980), cert. denied, 449 U.S. 863 (1980) as support for its claim that it was "adequate and reasonable" merely

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[2/] Actually, the State had at least two opportunities that Respondent's attorney knows about to brief the issue of whether due process attaches to parole in Illinois. In Newbury v. Irving, No. 80-2352 (7th Cir. July 23, 1981) the Seventh Circuit Court of Appeals appointed this attorney, Gary H. Palm, to represent Mr. Newbury and specifically instructed him to brief the issue of "whether the district court erred in concluding that Ill. Rev. Stat. ch. 38, §1003-3-5 (1978 supp.) did not create a constitutionally protected liberty interest." After the Appellant's brief was filed, the Office of the Attorney General of the State of Illinois indicated that it would not file a brief because no state official had yet been served with the complaint. No summons was served because leave to proceed in forma pauperis had been denied and the complaint had been dismissed by the district court. Thereafter the Seventh Circuit reversed the denial of in forma pauperis status and concluded that the district court had decided "too hastily" that the Illinois parole statute provided no due process protections. The case was remanded to consider this issue in more detail.

to "summarily highlight[]" the issue in its brief to the Seventh Circuit. Petition at 29 and 27. The State's reliance on these unpublished orders is completely misplaced. The State appears to argue that these unpublished orders implicitly overruled Richerson. In so doing, it overlooks the fact that these orders cannot be cited as precedent and cannot overrule a published decision. The rules of the Seventh Circuit explicitly state that unpublished orders, "[e]xcept to support a claim of res judicata, collateral estoppel or law of the case, shall not be cited or used as precedent (a) in any federal court within the circuit in any written document or in oral argument or (b) by any such court for any purpose."[3/] Seventh Cir. R. 35(b)(iv).

The published opinions, however, are consistent in ruling that the Illinois parole statute creates a protected liberty interest requiring due process guarantees. The case of United States ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir. 1975), cert. denied, 425 U.S. 914 (1976) was the first case to establish this. Richerson was reaffirmed in Christopher v. United States Board of Parole, 589 F.2d 924 (7th Cir. 1978), where the court expressly declined to reconsider Richerson. While both of these cases were decided before Greenholtz, neither has been overruled by the Seventh Circuit.

This consistency has continued in the recent case of Welsh v. Mizell, 668 F.2d 328 (7th Cir. 1982). Contrary

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[3/] In addition, the State has not fairly characterised the order in Parisie. The Seventh Circuit never reached the question of whether the Illinois parole system creates a liberty interest in that case. Instead the court merely dismissed the appeal for failure to pay the docketing fee.

to the State's assertion that the decision in Welsh is inconsistent with the decision in this case, the decisions are instead complementary. Welsh specifically held that "[i]f the [Illinois Prisoner Review] Board denies parole yet again, it must--as the state acknowledges (Br. 6)--give its reasons in order to satisfy the due process requirements of Greenholtz." 668 F.2d at 333. If Welsh had not found a protected liberty interest in the Illinois parole system, it would not have required that the Greenholtz requirements be met. However, contrary to the position taken by the State, the law in the Seventh Circuit has consistently been that due process attaches to parole in Illinois.

Furthermore, the State acknowledges its awareness of the unpublished Seventh Circuit order in Newbury v. Irving, No. 80-2352 (7th Cir. July 23, 1981). In Newbury, the court concluded that the district court had "proceeded too hastily" in coming to the conclusion "that the Illinois statutes governing parole did not create a liberty interest within the meaning of the Constitution." If the state truly believed that unpublished opinions indicate the trend of the court, it is somewhat surprising that the decision in Newbury did not alert the state that its reading of the mood of the court might be incorrect.

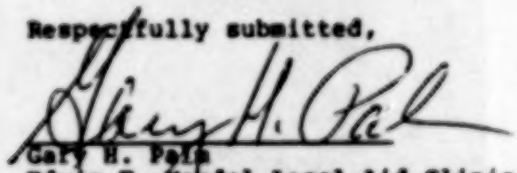
The State of Illinois has had at least two opportunities to brief the issues presented in this case. In both instances the Attorney General decided not to give his best effort and file a brief setting out his complete argument. He should not now be allowed to benefit from his earlier lack of effort. The Seventh Circuit Court of Appeals never refused to let the Attorney General file any brief in this

case. Rather it was the Attorney General who chose not to prepare and file his best brief. Certiorari should not be granted for the purpose of ordering the Seventh Circuit to allow the Attorney General yet another opportunity to file a brief on this issue.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,



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APPENDIX A

STATE OF ILLINOIS
PRISONER REVIEW BOARD

Date: _____

To the Warden—
The following order is your authority to release this individual on parole to the custody and supervision of the Office of Community Supervision, or continue to hold as indicated. If parole is ordered, said order is subject to being vacated prior to release on parole. Any release is contingent upon execution of Parole or Mandatory Supervised Release Agreement.

☐ Parole granted effective when

- ☐ Parole plans are approved
- ☐ Minimum is served
- ☐ Eligible

☐ Subject to regular conditions and

- ☐ Close Supervision
- ☐ Special Condition No. _____
- ☐ Recommendation No. _____

☐ Parole denied, continued to _____

☐ Hearing continued to ___To Base_____

- ☐ Psychiatric Report requested
- ☐ For verification of parole plans
- ☐ At inmate's request

☐ Release date after addended to this Order

☐ Declared a violator as of _____ on

- ☐ Statutory Parole
- ☐ Mandatory Supervised Release
- ☐ Parole

☐ Parole or release revoked

- ☐ Continued to _____

☐ Parole or release continued

- ☐ Effective _____
- ☐ Effective when plans are approved

☐ Found not to be a violator

☐ Hearing continued to _____

- ☐ For further information
- ☐ At inmate's request
- ☐ For Violation Report
- ☐ Recommendation No. _____
- ☐ Special Condition No. _____

☐ Order of _____

- ☐ Amended
- ☐ Stayed
- ☐ Vacated

☐ Warrant withheld
☐ Warrant withdrawal request

- ☐ Granted
- ☐ Denied

☐ Statutory Parole

☐ Release by statute

☐ Considering all factors of your case, it is the judgment of the Board that parole is warranted.

☐ See Addendum attached to and made a part of this Order

The Board, considering all factors in your case, is denying parole at this time because of one or more of the following statutory reasons:

☐ There is a substantial risk that you will not conform to the reasonable conditions of parole, based upon one or more of the following reasons:

- ☐ Existence of prior adult felony convictions.
- ☐ An apparent pattern of aggressive or assaultive behavior (misdemeanor offenses also considered).
- ☐ Prior adult parole or probation violations within five years prior to offense.
- ☐ Refusal to be supervised on parole.
- ☐ Inadequate parole plan.

☐ Your release would depreciate the seriousness of the offense or promote disrespect for the law, based upon one or more of the following factors:

- ☐ The offense for which you were convicted, _____
- ☐ The aggravating as well as mitigating circumstances as described by statute.

☐ Your release would have a substantially adverse effect on institutional discipline based upon one or more of the following factors as established by the finding of an Administrative Review Board:

- ☐ Physical attack on another inmate or institutional staff.
- ☐ Possession of weapons or drugs.
- ☐ Repeated violations of major institutional rules.
- ☐ Committed an act prohibited by law.

Violator Rationale

Parole or release is violated because you:

☐ Were convicted of (charged with) _____
☐ Violated condition(s) _____ of your Parole or Release Agreement
☐ Violated condition(s) _____ of your Special Order
☐ Absconded
☐ Possessed ☐ Delivered
- ☐ A controlled substance
- ☐ A weapon

☐ Did not comply with your counselor's instructions to _____
☐ Failed to report or falsified report(s)

Evidence Relied Upon

- ☐ Counselor's Report
- ☐ Police Report
- ☐ Testimony or reports of witnesses
- ☐ Own admission

☐ See Addendum attached to and made a part of this Order

For The Board

[signature]

[signature]

[signature]

White: Board
Canary: Inst. File
Pink: Resident
Goldenrod: Clinical or Parole Services

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

NO. 82-480

JOSEPH P. MCCOMBS,

Petitioner,

v.

WILLIAM SCOTT,

Respondent.

RECEIVED
OCT 21 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NOTICE OF FILING

TO: Tyrone C. Fahner
Attorney General
Michael B. Weinstein
Darrell Panethiere
188 West Randolph Street
Suite 2200
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 18th day of October, 1982, the undersigned filed with the Clerk of the United States Supreme Court, one copy of the Respondent's Motion for Leave to Proceed In Forma Pauperis, Supporting Affidavit, and Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. The undersigned, a member of the Bar of the United States Supreme Court, being first duly sworn on oath, deposes and states that said filing was properly addressed to the Clerk of the United States Supreme Court, carried out by depositing same in a United States mailbox at 1111 East 60th Street, Chicago, Illinois 60637, with first-class postage prepaid, before the hour of 5:00 p.m. on the 18th day of October.

Gary H. Palm
Counsel for Respondent,
William Scott

Subscribed to and Sworn
before me this the 18th
day of October, 1982.

Notary Public

PROOF OF SERVICE

The undersigned, an attorney, being first duly sworn on oath, deposes and states that he served the foregoing Notice of Filing, together with one copy of the attached Motion for Leave to File In Forma Pauperis, Supporting Affidavit, and Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit upon the above named by placing a copy of same in envelopes addressed as above and depositing said envelopes in the United States Mailbox located at 1111 East 60th Street, Chicago, Illinois 60637, first class postage prepaid, before the hour of 5:00 p.m. on the 18th day of October, 1982.

Gary H. Palm
Counsel for Respondent,
William Scott

Subscribed to and Sworn
before me this the 18th
day of October, 1982.

Notary Public

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Gary H. Palm
Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School
6020 South University Avenue
Chicago, Illinois 60637
(312) 324-5181

FJ1

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

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NO. 82-480

JOSEPH P. MCCOMBS, Petitioner

v.

WILLIAM SCOTT, Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, William Scott, asks leave to proceed in forma pauperis pursuant to Rule 46. In forma pauperis status was sought and granted in both the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit below.

The respondent's affidavit in support of this motion is attached hereto.

Gary H. Palm
Counsel for Respondent

Gary H. Palm
James E. Brown, Senior Law Student
Ruth Krugly, Senior Law Student
Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School
6020 South University Avenue
Chicago, Illinois 60637
(312) 324-5181
Counsel for Respondent, William Scott

1/

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

NO. 82-480

JOSEPH P. MCCOMBS, Petitioner

v.

WILLIAM SCOTT, Respondent

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, William Scott, being first duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore.

I further swear that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed?

No.

If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

June, 1967. Around $700 per month.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

No.

3. Do you own any cash or checking or savings account?

No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

William Scott

Subscribed and Sworn to
before me this the
13 day of October, 1982.

Cheryl Hickey
Notary Public